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the territory of the other.[11] Although this doctrine defeats the purpose of the general rule, it seems better from the peculiar exigencies of this limited class of cases that the State should be forced to prove that the act occurred within its territorial limits.[12]

An internal difficulty arises as to the exercise of the extraterritorial authority where a State has vested its entire criminal jurisdiction in county or district courts whose local jurisdictions are confined to the county boundaries.[13] In the absence of specific statutory provision they would generally have no jurisdiction beyond those boundaries,[14] but because of the impossibility of state jurisdiction without courts to administer the laws, it is held that under the statutes ratifying the concurrent jurisdiction,[15] and even at common law, the county courts are given jurisdiction of the adjoining territory outside their boundaries, but within the jurisdiction of the State as an incident to their defined powers.[16] In the recent case of *Brown* v. *State* (Ark. 1913) 159 S. W. 1132, the defendant claimed that his conviction, by a county court for a crime, which was a *malum prohibitum* in both States, committed outside the territorial limits of the State, was unconstitutional under a provision insuring him a trial by a jury of the county in which the crime was committed. But the court, by accepting the general view that the county court had jurisdiction, extended the tendency to disregard the literal wording of the law in order to effectuate the State's jurisdiction.[17] By sustaining the conviction the court in effect held that the constitution, despite its clear expression, merely assured the accused a trial by a jury of the county whose court had jurisdiction.[18]

RIGHT OF FOREIGN CORPORATIONS TO PLEAD STATUTE OF LIMITATIONS.—The right of an individual to avail himself of the Statute of Limitations depends upon his liability to personal service of process;[1] and under the provisions which suspend the operation of the Statute during the absence of the defendant from the jurisdiction, the test is not the physical presence of the defendant, but the possibility of

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[11]Where the same act is *malum prohibition* in both States it would appear to be within the scope of concurrent jurisdiction and no special assent should be required, and adverse action, *cf.* State *v.* Faudre, *supra,* would not be necessary where the act is *malum prohibition* in only one. Nielson *v.* Oregon, *supra; cf. Ex parte* Desjeiro (C. C. 1907) 152 Fed. 1004; 22 Harvard Law Rev. 599. Possibly the latter view limits to some extent the legislative jurisdiction allowed in Wedding *v.* Meyler, *supra.*

[12]See McFall *v.* Commonwealth (Ky. 1859) 2 Metc. 394; *cf.* Church *v.* Chambers (Ky. 1835) 3 Dana *274.

[13]Arkansas, Kirby's Dig. § 2085.

[14]State *v.* Davis (1856) 25 N. J. L. 386; but see Annie M. Smull (U. S. D. C. 1872) 2 Sawy. 226; *cf.* Welsh *v.* State (1890) 126 Ind. 71.

[15]State *v.* Mullen, *supra; cf.* State *v.* Metcalf, *supra;* Acts of Ark. 1911 Act. 81, p 46.

[16]Biscoe *v.* State (1887) 68 Md. 294; State *v.* Seagraves (1905) 111 Mo. App. 353; *cf.* 5 Columbia Law Rev. 470.

[17]*Cf.* Carlisle *v.* State (1869) 32 Ind. 55.

[18]*Cf.* State *v.* Cameron (Wis. 1850) 2 Chand. 172.

[1]Hart *v.* Kip (N. Y. 1893) 74 Hun 412; see Turcott *v.* Railroad (1898) 101 Tenn. 102.

obtaining personal jurisdiction over him.[2] The application of this principle to a foreign corporation, which cannot migrate from its domicile in the State of its creation, would make it impossible to obtain personal jurisdiction over any foreign corporation, which has not complied with the laws providing for domestication.[3] The inconvenience and injustice of this immunity of foreign corporations from personal judgment led to the universal enactment of statutes to the effect that service upon any agent carrying on the corporate business within the jurisdiction shall give personal jurisdiction over the corporation itself;[4] and the courts have uniformly held that the corporation has submitted itself to these provisions by voluntarily doing business within the jurisdiction.[5]

What constitutes "doing business" within the scope of this rule is often a difficult question; the requirement generally adopted is that the business must be of a fairly permanent nature, and be conducted in a reasonably open manner; and that there must be a representative who is at all times subject to personal service of process.[6] This method of removing the barriers to personal jurisdiction over a foreign corporation is based on the conception that the corporation can act only through agents, and it may therefore be said that the corporation has an actual residence wherever its representatives carry on the corporate business.[7] So a clear-cut distinction is made between the actual residence of the corporation and its legal domicile, which can exist only in the State of its creation. Some courts have recognized this distinction for the purpose of acquiring personal jurisdiction of the corporation, but have repudiated it when the corporation sought to avail itself of the Statute of Limitations.[8] A fairer and more logical result has been reached by the majority of the courts. They hold that, since the plaintiff has, at all times, had an opportunity, by serving his process on the resident agent, to bring the defendant foreign corporation into court, there is no sound reason for denying to the corporation the right to plead the Statute of

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[2]Blodgett *v.* Utley (1875) 4 Neb. 25; *cf.* Lane *v.* National Bank (1870) 6 Kan. 74.

[3]St. Clair *v.* Cox (1882) 106 U. S. 350; but see North Mo. R. R. *v.* Akers (1868) 4 Kan. 453, 469.

[4]5 Thompson, Corporations (2nd ed.) § 6755.

[5]See Larson *v.* Aultman etc. Co. (1893) 86 Wis. 281. The same result has been reached in England, Newby *v.* Colt's Patent Fire Arms Co. (1872) L. R. 7 Q. B. 293, following the dissenting opinion of Lord St. Leonards in Carron Iron Co. *v.* MacLaren (1885) 5 H. L. C. *416, *449, and codified in the Companies Act, 8 Edw. VII, ch. 69, § 274.

[6]See Winney *v.* Sandwich Mfg. Co. (1892) 86 Ia. 608; 5 Thompson, Corporations (2nd ed.) § 6750.

[7]See City of St. Paul *v.* Chicago, M. & St. P. Ry. (1891) 45 Minn. 387, 398. "The places of business may, for the purposes of jurisdiction, properly be deemed the domicile." Lord St. Leonards dissenting in Carron Iron Co. *v.* MacLaren, *supra*, at page 450. See also Thompson *v.* Texas Land Co. (Tex. Civ. App. 1893) 24 S. W. 856; Huss *v.* Central R. R. & Banking Co. (1880) 66 Ala. 472; Turcott *v.* Railroad, *supra*.

[8]Williams *v.* Metropolitan Street Ry. (1903) 68 Kan. 17; State *v.* National Accident Society (1899) 103 Wis. 208; Larson *v.* Aultman etc. Co., *supra*.

Limitations as a bar.[9] This view is based on the real object of the Statute and those cases seem indefensible, which deny this defense to foreign corporations doing business within the State, where a statute provides for service upon the agent. But in New York the early statute of personal service[10] was construed to give the court merely jurisdiction *in rem,* over corporate property within the State.[11] Upon this premise the decisions depriving these corporations of the right to plead the Statute are sound.[12]

In the recent case of *Hale* v. *St. Louis & S. F. Ry.* (Okla. 1913) 134 Pac. 949, the statute provided that service upon the agent gave personal jurisdiction over the foreign corporation, nevertheless the court held that defendant could not plead the Statute of Limitations. This result was reached upon the non-compliance by the corporation with the law of the State providing for domestication of foreign corporations. This is ordinarily no valid ground for denying the corporation the benefit of the Statute of Limitations, in absence of an express provision making compliance with such requirements a condition precedent to obtaining personal jurisdiction.[13] But the law of Oklahoma is very strict in forbidding recalcitrant corporations from doing business within the State.[14] And although this may be said to constitute an implied condition precedent to the legal existence of the defendant in the State, the opinion seems to be justifiable only on the policy of the State to protect its citizens from irresponsible foreign corporations.

PRIVILEGED COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT.—The early common law considered the rule of the exclusion of confidential communications made by client to his attorney as a privilege belonging only to the attorney, and extended this privilege only to those communications made in reference to pending suits. It followed, of course, that only the attorney could waive or raise the privilege.[1] But by the modern cases it is universally recognized that the true

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[9]Huss *v.* Central R. R. & Banking Co., *supra;* Pennsylvania Co. *v.* Sloan (1878) 1 Ill. App. 364; McCabe *v.* Illinois Central R. R. (U. S. D. C. 1882) 4 McCrary 492; *cf.* Mortgage Co. *v.* Butler (1910) 99 Miss. 56; City of St. Paul *v.* Chicago, M. & St. P. Ry., *supra.*

[10]Laws of New York (1855) ch. 279, p. 470.

[11]Hulbert *v.* Hope Mutual Ins. Co. (N. Y. 1850) 4 How. Pr. *275; Brewster *v.* Mich. Centr. R. R. (N. Y. 1850) 5 How. Pr. 183. See Tioga R. R. *v.* Blossburg & Corning R. R. (1873) 20 Wall. 137.

[12]Olcott *v.* Tioga R. R. (1859) 20 N. Y. 210; Rathbun *v.* Northern Central Ry. (1872) 50 N. Y. 656. These cases have overruled Faulkner *v.* D. & R. Canal Co. (N. Y. 1845) 1 Denio 441. The present statute, New York Code Civ. Proc. § 432, provides that the corporation shall designate an agent within the State to receive service of process. A foreign corporation complying with this provision may plead the Statute of Limitations. See Wehrenberg *v.* N. Y. N. H. & H. R. R. (N. Y. 1908) 124 App. Div. 205.

[13]Turcott *v.* Railroad, *supra;* See King *v.* National M. & E. Co. (1881) 4 Mont. 1; but see O'Brien *v.* Big Casino Gold Mining Co. (1908) 9 Cal. App. 283.

[14]Oklahoma Revised Laws (1910) §§ 1335 *et seq.*

[1]4 Wigmore, Evidence, § 2290.